IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.21291 of 1999

Between:

Y.Eswar Reddy, S/o. Y.Chinna Venkat Reddy,
R/o. 3-172, Santhinagar Colony,
Kukatpalli, Hyderabad.

..... PETITIONER

AND

A.P.State Co-operative Marketing Federation Ltd.,

Rep. by its Managing Director,
Parishram Bhavan, Basheerbagh,
Hyderabad-500 029.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of Writ of Mandamus or any other appropriate Writ declaring the proceedings Rc.No.EJ/527/97 dated.6.9.99 in not paying the exgratia during the period of suspension and also not paying the gratuity in accordance the provisions of payment of Gratuity Act,1972 is illegal and arbitrary and consequently direct the respondent to pay the exgratia during the period of suspension, i.e.12.3.85 to 8.4.85 and 13.9.+85 to 8.11.90 for payment of exgratia under the Voluntary Retirement Scheme and also pay the difference of Gratuity together with interest and costs and pass such further order or orders as the Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondent: Mr. VILAS V. AFZAL PURKAR

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings dated 6-9-1999 of the respondent in not paying the exgratia during the period of suspension and also the gratuity in accordance with the provisions of the Payment of Gratuity Act,1972 as arbitrary and illegal and consequently to direct the respondent to pay the exgratia during the period of suspension i.e. 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 under the Voluntary Retirement Scheme and also the difference of gratuity together with interest.

The petitioner on introduction of Voluntary Retirement Scheme in the respondent-Markfed retired as such with effect from 31-1-1999. By the impugned Proceedings dated 6-9-1999, all his retiral benefits were released, but the pension and other benefits were reduced on the ground that during the interregnum period from 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 he was under suspension. A peculiar stand has been taken by the respondent stating that the petitioner is not entitled to reckon the service rendered by him during the said period for the purpose of retiral benefits under the Voluntary Retirement Scheme for the reason that he did not work during that period, though 100% of the salary was paid to him for the said period. In fact, on a representation made by the petitioner on an earlier occasion as to treating the period of suspension as extraordinary leave and on the undertaking given by him to forego the arrears, the respondent passed orders on 27-10-1990 granting notional increments during the period of suspension without monetary benefits. Once this is so, the stand taken by the respondent that the period from12-3-1985 to

8-4-1985 and 13-9-1985 to 8-11-1990 cannot be reckoned for the purpose of extending benefits under the Voluntary Retirement Scheme is nothing but illegal. The fact as to the continuation of the services of the petitioner from 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 was concluded under the Proceedings of the respondent dated 27-10-1990 itself. Therefore, the contention of the respondent that the petitioner is not entitled for the pensionary benefits for the said period has no legs to stand. Under these circumstances, the impugned Proceedings so far as not treating the period from 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 as continuity in service does not stand the scrutiny of law and as such, it is liable to be set aside. Insofar as the entitlement to the gratuity under the Payment of Gratuity (Amendment) Act,1998 is concerned, in a similar Writ Petition (W.P.No.7362 of 1999), which is just now disposed of, it is held that the provisions of the Payment of Gratuity (Amendment) Act,1998 under which the gratuity is enhanced from Rs.1.00 lakh to Rs.3.50 lakhs are applicable with effect from 24-9-1997. It is not denied that the said Act is not applicable to the petitioner.

In the result, the Writ Petition is allowed and the impugned Order insofar as not treating the period from 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 as continuous is concerned, is set aside. The respondent is directed to treat the period from 12-3-1985 to 8-4-1985 and 13-9-1985 to 8-11-1990 as continuation period for the purpose of reckoning the benefits (exgratia etc.) under the Voluntary Retirement Scheme under which the petitioner retired with effect from 31-1-1999. The petitioner is also entitled for the gratuity as per the provisions of the Payment of Gratuity (Amendment) Act,1998. The respondent shall pass appropriate orders, in this regard, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

13-7-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Wednesday, Thirteenth day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director,

A.P.State Co-operative Marketing Federation Ltd.,

Parishram Bhavan, Basheerbagh,Hyderabad-500 029.

2. 2 CD copies